

**Written Contribution of Migrant Forum in Asia to the
Committee on the Rights of the Child
Day of General Discussion
28 September 2012**



**The Rights of All Migrant Workers and their Children in the
Context of International Migration**

Introduction

Migrant Forum in Asia (MFA)¹ welcomes the decision of the Committee on the Rights of the Child to devote its 2012 Day of General Discussion to the rights of all children in the context of international migration. MFA looks forward to its participation in this discussion day and provide contribution to the Committee's dialogue with and recommendations to stakeholders on issues relating to the rights of children in the context of international migration.

MFA aims to draw the attention of the Committee to the adverse situations of migrant workers and members of their families, particularly their children who are critically affected by international labor migration and immigration policy regimes. Children in the migration process, namely children left behind, children on the move² and children in receiving countries³, are in most cases directly affected by the migration experiences of their adult migrant worker family members. Migrant workers are subjected to specific national, regional and international policies which are discriminatory and that restrict their movement and employment, and even deny their rights to family, marriage, registration of birth of their children, citizenship and access to social services. Such specific policies can violate the rights of migrant workers; such policies can also produce cumulative effects and serious repercussions on members of their families, in this case their children.

The following situations in Asia reveal stringent migration policy regimes that obstruct the full realization of the rights of migrant workers and their children. MFA requests the Committee to tackle the

- Social costs of migration
- Detention of migrant workers and members of their families in irregular situations
- Residency and citizenship of migrant workers and members of their families, particularly birth registration and right to citizenship
- Access to education, healthcare and other social services for migrant children,

and make them priority issues in the deliberations with and recommendations to States. Children and their rights affected by the migration process are symptomatic of broader labor and human rights issues faced by migrant parents and adult family members. The afflictions endured by migrant workers are being passed on to their children and family members.

¹ Migrant Forum in Asia (MFA) is a network of civil society organizations, trade unions, and individuals in Asia working together to advocate for social justice for migrant workers and members of their families. The network is guided by a vision of an alternative world system based on respect for human rights and dignity, social justice, and gender equality for all. To date, MFA is represented in 16 nations by 48 civil society and trade union groups, and 6 key partners in the MENA region. The members and partners are also coalitions and networks, bringing MFA membership in Asia close to 200, and growing each year.

² Either they accompany their migrating parents or they migrate alone, independently of parents and adult guardians.

³ Especially children in irregular situations

Social costs of migration

Although remittances alleviate immediate poverty of migrant workers' children and their families left behind, the social costs of migration have been too rampant and too visible that they can no longer be ignored and sidelined in policy debates. They require the immediate attention and proactive response of the international community. Social costs that affect migrant families range from (i) the break-up of the family unit due to the migration of one or two parents, (ii) changing gender roles and family responsibilities, (iii) complacency because of dependence on the remittances sent by migrant parents or family members, (iv) added financial and psychological burdens to families left behind because of debt incurred from the migration of family members, exploitation of moneylenders and control of relatives over remittances, (v) exposure to abuse or exploitation of children because of the absence of parental or custodial supervision and (vi) psycho-social effects to children such as feelings of sadness, stress, depression, isolation, abandonment and aggressive behavior, among others.

Some States in Asia have programs which respond to the social costs of migration to families left behind, but these measures are minimal, expedient and stop gap. While these programs lend support to children and families left behind, they however only address what is immediate and do not delve in to the heart of the problems experienced by migrant workers and their families left behind, society and the State.

In Sri Lanka, migrant workers who are registered at the Sri Lankan Bureau of Foreign Employment (SLBFE) automatically receive Jatikha Suraksha. Jatikha Suraksha is SLBFE's foreign employment insurance policy that offers migrant workers life insurance, disability and repatriation benefits and medical benefits for families left behind. The insurance policy also covers scholarships for children of registered migrants. Employers and or agents of migrant workers shoulder the costs of payments to Jatikha Suraksha if the registered migrant workers are employed in GCC countries and Malaysia. The workers who wish to work in Cyprus, Israel, Singapore or Hong Kong have to pay all their expenses, including insurance payments.

The Rataviru Associations of SLBFE was established to protect the interests of migrant workers, returnees and their families and with the aim of assisting them to contribute more towards economic development. While intending migrants and returnees are trained for employment abroad through the association, their children are also assisted by the association through its education programs in Information Technology and English. The aim is to encourage children to take skilled employment such as nurses and nursing assistants. Rataviru Associations promote labor migration.

Non-government organizations in Sri Lanka such as Caritas, World Vision and Save the Children have psycho-social programs to children of migrant workers. Children's clubs and networks are set up especially in the rural areas that facilitate life skills trainings for children and reintegration programs (in the case of Caritas for migrant parents). Children of migrant workers are provided support as part of the entire population of children in the villages.

Similarly in the Philippines, the welfare fund of the Overseas Workers' Welfare Administration (OWWA), a quasi-governmental entity funded by contributions of migrant worker members, entitles members life insurance and disability benefits and healthcare assistance to families left behind. The challenge here lies on information dissemination, as migrant workers and families are not aware of the benefits or do not know the process of obtaining membership and claiming benefits.

Civil society serves as catalyst to bringing attention to the needs of children left behind. In the Philippines for example, Atikha Overseas Workers and Communities Initiatives (ATIKHA)

works to help families address the social costs of migration and tap the development component of migration. Atikha provides school-based programs for children of migrants in partnership with private and public schools composed of series of information and value formation activities for the children, “Children’s Response to the Challenges Migration: Migration Realities and Capacity Building Training for Children”. This program has been running since 2008 and implemented in 45 partner schools in provincial areas of Laguna, Batangas, Cavite and Pampanga. Topics discussed in the various information education activities include the following: Life and Work Conditions of Migrants Abroad, Positive and Negative Effect of Migration, Instilling Savings Consciousness Disavowing Consumerism, Bridging the Gap Fostering Good Communication and Relation, Importance of Goal Setting and Education, Gender Sensitivity and Peer Counseling.

Atikha signed an MOU with the Department of Education (DepEd) Divisions in the Provinces of Batangas, Cavite and Laguna in integrating migration issues in the elementary and secondary curriculum. A total of 270 teachers and school heads from Laguna, Batangas, Cavite and Pampanga participated in the Training of Teachers on Migration Realities and Capacity Building Seminar for Children. These teachers are tasked to roll-out the program in their respective schools. Atikha also advocates with DepEd National Office in the integration of migration issues and concerns in the elementary & secondary curricula.

Despite efforts to mainstream the issues of social costs of migration, there is still an absence of comprehensive national policies and initiatives that look in to the situations of children left behind. Such situations are viewed as family and civil matters that do not seem to fall in the realms of migration law. Civil society advocating for the welfare of children and families left behind devise ways to resolve problems arising from the social costs of migration. Family and anti-child abuse laws are used as legal remedies for cases of physical and sexual abuse of children and child labor (committed by family members or guardians), or abandonment (non-support from migrant parent/s). Advocacy for the inclusion of provisions for children left behind to national migration policies are also being pushed by civil society and migrant support groups.

Detention of migrant workers and members of their families in irregular situations

Detention of migrant workers in irregular situations is a common, draconian practice in Asia and elsewhere in the world. Migrant workers are arbitrarily detained although the typical reasoning of States on such action is on administrative grounds – migrant workers lack of employment and residency permits, identity documents and the like. However, the “act” or “state” of being undocumented seems to be an automatic basis for States to arrest, detain and deport migrant workers and members of their families. The consequence of such is criminalizing the migrant worker for his or her irregular status without due regard to the cause of his or her “undocumentedness.” National and cross-border migration policy regimes do not have clear regulations on detention therefore migrant workers and members of their families suffer and face legal uncertainties as to the duration of their detention and redressal of their grievances.

The administration of detention policies in Israel and Lebanon for instance inadvertently or directly violate the rights of migrant workers and members of their families in irregular situations.

In Israel, since July 2007, the government has been detaining asylum seekers and mixed migrants⁴ entering the country. The government refers to them as “infiltrators.”⁵ The Ketsiot

⁴ refugees, asylum seekers, economic migrants and other migrants

⁵ Refer to Israel’s 2008 Infiltration Law

Prison holds approximately 1000 asylum seekers, including 100 children held together with their parents.⁶ Another established detention compound, Saharonim Facility, holds an average of 800 male asylum seekers, and two wings of the compound detains 200 mothers and children⁷. The physical living conditions in the detention centers are grim, and psychosocial support and education, especially for the children, are next to nil. Alternatives to detention sites such as kibbutzim⁸ were set up in Israel; however despite efforts to protect their rights, some of the asylum seekers and mixed migrants experienced restricted freedoms as they were not also allowed to leave the sites.

In Lebanon, where legislation is lacking within the Lebanese legal structure, Ministers or Director Generals of government departments have the mandate to issue administrative decisions and circulars that provide a framework for the regulation of migrants and their families. The discretionary powers of the Director-General of General Security and inconsistencies in legal practice have had detrimental impacts on the rights of children of migrants in Lebanon. Outlined below is an example of an administrative decision made by the Director General of the General Security that was contrary to prevailing Lebanese law. In instances where there is uncertainty about the age of a person, it is common practice throughout Lebanon for a local 'major' (government official) to issue a determination of age. However, a circular issued by the Director General of the General Security rescinded this practice. The circular did not provide for an alternative mechanism for assessing age. A lack of a consistent legal process for establishing age has exposed children of migrants, who often lack financial resources, *wasta* (community connections) and adequate documentation, to arbitrary detention. For example, in 2009 a fourteen year-old boy was arrested. He reported he was fourteen years of age and was promptly released into his parents' custody. Police processes within Lebanon necessitate that documentation be completed recording the event and consequentially the reported age of the child. Approximately two years later the boy was again detained. On this occasion, the boy appeared older to the law enforcement officials. The records from the prior detention should have confirmed the child's statement that he had not yet reached the age of majority. However, the police assessed that the boy was an undocumented migrant worker and therefore detained him for a period of approximately one month in a facility for adults. This case of the boy shows that arbitrary administrative decisions that become binding without the due debate and support of parliament renders migrant workers and their children at risk of abuse and exploitation.

Residency and citizenship of migrant workers and members of their families

The increased mobility of people worldwide affects the traditional notion of citizenship and residency. The State has the mandate to decide on who can stay in their territories and who will be given residency and citizenship but human rights principles should have a bearing in the decision-making. The right to family, the right to family reunification, recognition of the situations of migrant workers and members of their families in irregular status, asylum seekers, refugees and stateless persons should be grounds for the determination of residency and citizenship.

Although States pursue a range of naturalization procedures to bring migrant workers in the purview of citizenship, a growing number of migrants remain without formal citizenship and consequently lack the rights entailed to citizens. Cases of such are highlighted in the following cases.

⁶ *Idem*

⁷ *Idem*

⁸ A communal settlement in Israel, typically a farm

Birth registration

Migrant workers in irregular situations who give birth to their children while in the receiving countries experience problems in having their births registered. Such non-registration of marriages and births lead to the statelessness of migrant children and non-acceptance by the origin countries of their parents.

In Korea for example, “foreign nationals” may “report” births but documentations are filed away and not entered in an official registry.⁹ The person reporting the birth is often asked to provide his or her alien registration number and if the government official handling the birth registration finds out that the person reporting is undocumented, the former is obligated to report the latter to immigration authorities. In this practice, it is difficult for undocumented migrant workers to participate in the registration system.¹⁰

Right to residency and citizenship

The rights of migrant workers and members of their families are advertently violated in some instances where countries overemphasize the concept of allegiance to or “thick” links with a nation. But migrant workers and their children can have the power to challenge State laws and can claim rights to citizenship.

The 2008 decision of the Japanese Supreme Court granting Japanese citizenship to ten children with Filipino mothers (but unmarried to their Japanese fathers) is a case in point. The Japanese Supreme Court ruled that Article 3(1)5 of the Nationality Law of Japan (that required marriage in case one parent was non-Japanese in order that Japanese nationality could be acquired by their children) discriminated against children who were born out of wedlock yet acknowledged by their Japanese parents after birth, and violated the equality provision (Article 14-1) 6 of the Constitution of Japan. This ruling resulted to an amendment of Japan’s Nationality Law.

A similar challenge to the nationality law of Japan is the case of Japanese nationality to be granted to children who were born out of married parents if they have been registered within 3 months to their father's family registry. The child will lose nationality if no intentions are shown to obtain it after three months of birth. This provision resulted in migrant children losing citizenship because their parents are unaware of such existence of a law.

Living in Japan for many years and assimilating to the culture of the country are not apparently considered grounds for retaining residency. Deportation of the entire family can be ordered by the government.¹¹ Children can also be separated from their families because they are forced to make decisions to stay in Japan or deported back together with their families to their countries of origin.¹²

⁹ Korea UPR submission, April 2012

¹⁰ Idem

¹¹ One case is of a family who had been living in Japan for more than 20 years with a 14-year-old child who was born in Japan and speaks only Japanese, a court ruled that since they did not have a residence permit, the father would be deported to Pakistan and the mother and the child to the Philippines.

¹² A 13-year-old girl who was born in Japan and went to Japanese school with very good results, was forced to choose between her right to education and her parents. She decided that she wanted to continue her education in Japan, and her parents were eventually deported.

Education

In Japan, the Japanese government announced that “Japanese public schools at the compulsory education level guarantee foreign nationals the opportunity to receive education if they wish to attend such [a] school by accepting them without charge, just as they do with Japanese school children”, but this simply means that “permission” will be given if the non-Japanese national “wishes” to enroll. However, the school/administration does not have the legal obligation to accept such students, and for non-Japanese nationals, education is not “secured” as a legal “right.” In other words, migrant children, regardless of legal status, are studying in public schools, but it is not based on the rights of foreign (or migrant) children but on the government’s favor to provide school education. This resulted in the neglect of non-attendance of migrant children. Students attending “minority” schools tend to be led in marginal positions. The focus of special measure for migrant children has been to teach Japanese so that they can soon assimilate into Japanese schools, even though no comprehensive program was developed to teach Japanese as a second language. In terms of non-attendance, municipalities were relatively keen to solve the problem and the Ministry of Education started investigation. This is partly due to the fear of delinquencies of those who are not involved in schools, rather than concerns about migrant children’s rights to education.

In Korea, the government has promised that migrant children, whether registered or not, will be offered equal opportunities in education. Most of them, however, are still being discriminated against systematically — they have difficulty getting admitted to and registered at schools leading many of them to quit for various reasons.¹³ About 35 percent of migrant children were being raised at home before receiving public education, which widens the gap between Korean children who go to preschools and private institutes before starting elementary school.¹⁴ The most difficulty for migrant children was the learning of the Korean language it was seen as a barrier for entering elementary school. However, the regular crackdown of unregistered migrants and the obstacles of getting along with Korean students also accounted for these children to drop out of school.¹⁵

Healthcare and other social services

Healthcare for migrant workers and members of their families, though it exists, access to it is limited and restricted.

In Korea, undocumented migrant children can be supported regarding in-patient care and out-patient surgical care but no support is provided for general doctors’ visits, vaccinations or routine medical examinations.¹⁶ An estimated 17,000 undocumented migrant children are in Korea as of April 2012 but a limited 77 medical facilities nationwide provide healthcare support.¹⁷

In Lebanon, while the unified contract under which migrant domestic workers are employed requires employers to take out medical insurance for their employees, this does not extend to the children of migrant workers. It should be noted here that current Lebanese legislation

¹³ Korea Times, “For migrant children, getting fair education is still elusive,” 3 November 2010

¹⁴ The Joint Committee with Migrants in Korea (JCMK) conducted research on the condition of migrant children’s education at the request of the National Human Rights Commission (NHRC).

¹⁵ Ibid

¹⁶ Korea UPR submission, April 2012

¹⁷ Idem

asserts that should a migrant domestic worker fall pregnant while in Lebanon she must immediately return to her country of origin. Thus there is limited basis for arguing for the extension of a migrant domestic workers health insurance to coverage of her children.

Given the limited capacity of migrant workers to pay for medical consultations, medications and procedures, they are often dependent on the discretionary benevolence of the NGO community. Such circumstances foster insecurity, anxiety and inconsistency. A trend has emerged where NGOs are required to publicly fund raise for costly medical procedures relating to an individual child's treatment. Such fundraising often involves raising awareness about the particular case on radio and TV. While such fundraising is necessary in order to secure funds, the preservation of the dignity of migrant worker families and right to privacy is challenged throughout this process.

Recommendations

- It is crucial for the international community to address the root causes of international labor migration. There is a need to ensure that labor migration is the result of informed choices by individuals rather than the result of direct or indirect pressure that denies fundamental freedoms and human rights. By considering that we can fully engage in addressing the situations of children left behind, children on the move and children in receiving countries.
- Migrant workers' right to family life should be recognized, especially when a worker remains in the country of destination for an extended period of time. Long term migrant workers and their families must have access to permanent residency and citizenship.
- States should take a look at structures that brought the deprivation of citizenship, removing purely geographic biases. Country of origin and migration status cannot be grounds for denying or restricting rights (e.g. education, health care, social security, access to employment and labor training).
- States should design, modify or implement policies that do not criminalize migrants on the grounds of their undocumented status. These policies should align with international human rights treaties that have specific provisions on the needs of migrant workers and members of their families.
- There is a need for proactive cooperation on an equal basis between host and sending countries in dealing with the issues of irregular migration. The host countries should neither act in an arbitrary manner nor act unilaterally. In a host country where there is a sizeable population of undocumented migrant workers, it is imperative on the host country to engage in a meaningful, deliberate dialogue with origin countries on how the situation can be resolved because irregular movement of peoples are also symptoms of what is happening in the sending countries and there might be a need within the practice of regionalism to look in to international cooperation.